

NATIONAL LABOR RELATIONS BOARD

KIPP ACADEMY CHARTER SCHOOL,

Employer,

Case No. 02-RD-191760

and

NICOLE MANGIERE and CHRISTOPHER DIAZ,

Petitioners,

and

UNITED FEDERATION OF TEACHERS,
LOCAL 2, AFT, AFL-CIO,

Union.

**RESPONSIVE BRIEF OF THE UNITED
FEDERATION OF TEACHERS, LOCAL 2, AFT,
AFL-CIO**

ROBERT T. REILLY
Attorney for the Union
52 Broadway, 9th Floor
New York, NY 10004
(212) 228-3382

JENNIFER A. HOGAN
ORIANA VIGLIOTTI
Of Counsel

TABLE OF CONTENTS

	PAGE
PRELIMINARY STATEMENT	1
ARGUMENT	1
The Board Should Use its Discretion to Decline to Assert Jurisdiction over KIPP	1
CONCLUSION.....	3
STATEMENT OF SERVICE	

TABLE OF AUTHORITIES

Cases

<i>Contract Sys., Inc.</i> , 202 N.L.R.B. No. 156 (1973).....	2
<i>NLRB v. Denver Building & Construction Trades Council</i> , 341 U.S. 675 (1951).....	2
<i>Northwestern University</i> , 362 N.L.R.B. 1350 (2017).....	2
<i>Temple University</i> , 194 N.L.R.B. 1160 (1972).....	2

Statutes

Civil Service Law § 201 <i>et seq.</i>	3
29 U.S.C. § 151 <i>et seq.</i>	3

PRELIMINARY STATEMENT

The United Federation of Teachers, Local 2, AFT, AFL-CIO (“UFT”) submits this brief in response to the Brief on Review filed by KIPP Academy Charter School (“KIPP”) in this matter.

In the Employer’s Brief on Review, KIPP argues that a declination order in this case would strip charter school employees across the country of the protections of the National Labor Relations Act (the “Act”). This argument is wrong and completely mischaracterizes the UFT’s position. The UFT seeks an order from the Board declining jurisdiction over *KIPP* due to KIPP’s unique position as conversion charter school created by New York State Law. Such a narrow declination of jurisdiction would not strip all charter school employees of the Act’s protection and would return KIPP employees to the protection of the Taylor Law, New York State’s labor law. For this reason and the reasons set forth in the UFT’s Brief on Review, the Board should decline jurisdiction in this matter over KIPP and dismiss the petition.

ARGUMENT

The Board Should Use its Discretion to Decline to Assert Jurisdiction over KIPP

In its Brief on Review, KIPP misses the point and spends nearly six pages arguing that a declination of jurisdiction in this matter exceeds the Board’s authority because “there is no evidence of an insufficient effect on commerce.” *See* KIPP Brief on Review (“KIPP Br.”) at 7, 8-13. However, as the Supreme Court held in 1951, “[e]ven when the effect of activities on interstate commerce is sufficient to enable the Board to take jurisdiction of a complaint, the Board sometimes properly declines to do so, stating that the policies of the Act would not be effectuated by its assertion of jurisdiction in that

case.” *NLRB v. Denver Building & Construction Trades Council*, 341 U.S. 675, 684 n. 28 (1951); *see also Contract Svs., Inc.*, 202 N.L.R.B. No. 156 (1973) (declining jurisdiction over employer engaged in bus transportation operation within the Panama Canal Zone); *Temple University*, 194 N.L.R.B. 1160 (1972) (declining jurisdiction over “quasi-public” university); *Northwestern University*, 362 N.L.R.B. 1350 (2017) (declining jurisdiction over football players at Northwestern University). This is exactly what the UFT is asking the Board to do here: use its discretion to decline jurisdiction over KIPP because asserting jurisdiction does not effectuate the policies of the National Labor Relations Act (the “Act”). *See* UFT Brief on Review (“UFT Br.”) at 10-17.

As clearly framed in the UFT’s Brief on Review, the UFT seeks a narrow order from the Board declining jurisdiction over KIPP. *See* UFT Br. at 10-12. The UFT is *not* asking the Board to “turn its back on . . . the petitioners [and] all employees in charter schools across the country,” as KIPP mistakenly argues. *See* KIPP Br. at 29. Rather, the UFT is asking the Board to do exactly the opposite: issue a narrow declination order that applies solely to KIPP as a conversion charter school created under New York state law. Such a narrow declination of jurisdiction will not deprive all charter school employees across the country of Board protection. Indeed, as the UFT argued, the Board need not, and should not, decline jurisdiction over charter schools as a whole due to myriad, and often conflicting, state laws regarding the establishment and maintenance of charter schools. *See* UFT Br. at 10-12.

Declination of jurisdiction in this matter will allow KIPP employees the protections of the Taylor Law, New York State’s labor law. *See* Civil Service Law § 201 *et. seq.* The Taylor Law provides, and in some cases exceeds, the concerted activity

protections KIPP claims to worry its employees will lose should the Board decline jurisdiction in this matter. *See* KIPP Br. at 30 (arguing declination of jurisdiction over KIPP employees would be a “shockingly perfidious act of abandonment”); *compare* Civil Service Law § 201 *et seq.* with 29 U.S.C. § 151 *et seq.* And KIPP need not worry about charter school employees across the country losing the protections of the Act because the UFT is seeking a declination order solely over KIPP as a New York conversion charter school.

CONCLUSION

For all of the forgoing reasons and those reasons set forth in the UFT’s Brief on Review, the UFT respectfully requests that the Board decline to exercise jurisdiction in this matter over KIPP Academy Charter School.

Dated: New York, New York
April 3, 2019

Respectfully submitted,

ROBERT T. REILLY
Attorney for Petitioner
Office & P.O. Address
52 Broadway, 9th floor
New York, New York 10004
(212) 228-3382

By: /s/ Oriana Vigliotti
JENNIFER A. HOGAN
ORIANA VIGLIOTTI
Of Counsel

STATEMENT OF SERVICE

I hereby certify that on April 3, 2019, I served the above brief on the following persons by electronic mail:

John J. Walsh, Esq. Region 2: jack.walsh@nlrb.gov

Thomas V. Walsh, Esq.: walsht@jacksonlewis.com

Lyle S. Zuckerman, Esq.: lylezuckerman@dwt.com

April 3, 2019
New York, New York

/s/ Oriana Vigliotti
Oriana Vigliotti